

**SECTION B, REGULATIONS FOR THE APPOINTMENT OF
COUNSEL AND GUARDIANS AD LITEM PURSUANT TO A
PRISONER TRANSFER TREATY (18 U.S.C. § 4109 (a) (2) and (b))**

Section B. Regulations for the Appointment of Counsel and Guardians Ad Litem Pursuant to a Prisoner Transfer Treaty (18 U.S.C. § 4109(a)(2) and (b))

General Provisions

1. Introduction.

- a. Transfers to the United States. This regulation prescribes the procedures to be followed for the appointment and compensation of counsel and guardians ad litem in connection with transfers of financially eligible offenders to the United States from a foreign country with which the United States has a treaty for the execution of penal sentences, pursuant to section 4109(a)(2) and (b) of title 18, United States Code.
- b. Transfers from the United States. Appointment of counsel and guardians ad litem in connection with transfers from the United States to a foreign country, pursuant to section 4109(a)(1), (b) and (c) of title 18, United States Code, will be made in accordance with the Criminal Justice Act (CJA), 18 U.S.C. § 3006A, and the "Guidelines for the Administration of the Criminal Justice Act." Forms shown at Appendices D and E may be used for the appointment and compensation of guardians ad litem pursuant to section 4109(b) of title 18, United States Code, in connection with prisoner transfers from the United States. Otherwise, the appropriate CJA form should be used for the appointment and compensation of counsel pursuant to sections 4106A and 4109(a)(1) of title 18, United States Code.

2. Background. The United States of America has to date entered into treaties providing for the transfer of certain offenders for the execution of penal sentences with the following nations:

Bolivia*	Canada
France	Mexico
Panama*	Peru*
Thailand	Turkey*

The countries indicated with "*" require that a request for transfer originate from that country's embassy in Washington, DC. Moreover, a prisoner requesting application should be advised that he or she should write to his or her embassy requesting that embassy officials draft a written request to the State Department. The State Department will notify the Office of Enforcement Operations, Criminal Division, United States Department of Justice, that a formal request for transfer has been received from the embassy.

In addition, the United States is a party to the multinational Convention on the Transfer of Sentenced Persons, which is in force with the following nations:

Austria	Bahamas
Belgium	Canada
Cyprus	Denmark
Finland	France
Germany	Greece
Italy	Luxembourg
Malta	Netherlands
Spain	Sweden
Switzerland	Turkey

United Kingdom and United Kingdom Territories:

Anguilla	British Indian Ocean Territory
Cayman Islands	British Virgin Islands
Ducie and Oeno Islands	Falkland Islands
Gibraltar	Henderson Island
Hong Kong	Isle of Man
Montserrat	Pitcairn
Sovereign Base areas of Akrotiri and Dhekelia in the Island of Cyprus	
St. Helena and St. Helena Dependencies	

The statute which implements such treaties appears at Chapter 306 of title 18, United States Code (§§ 4100 through 4115), a copy of which is included at Appendix A. Note: Although Canada, France and Turkey are parties to the multinational convention, prisoner transfers with respect to these countries generally are handled pursuant to the separate bilateral treaties between these countries and the United States.

Appointment of Counsel and Guardians ad litem in Prisoner Transfer Proceedings to the United States

1. General. Section 4108 of title 18, United States Code, provides for a proceeding to verify the consent of citizens or nationals of the United States to transfer to the United States for the execution of penal sentences imposed by foreign courts. The officer conducting the proceeding shall be a United States magistrate or a citizen designated by a judge of the United States. The verifying officer shall conduct the proceedings in the country in which the sentence was imposed in accordance with the guidelines to be included in the Procedures Manual for United States Magistrates, Volume IX, Guide to Judiciary Policies and Procedures. Additional guidance on the conduct of verification proceedings may be obtained from the Magistrate Judges Division, Administrative Office of the United States

Courts (area code 202-502-1830). The object of the proceedings is to ascertain that the offender is voluntarily consenting to transfer with knowledge of the consequences. If at the time of the transfer, the offender is under 18 years of age or deemed by the verifying officer to be incompetent, section 4100 of title 18, United States Code, provides that consent to the transfer must be given by a parent, guardian, guardian ad litem, or other appropriate official.

2. Right to Counsel and Guardians ad litem. Section 4109(a)(2) of title 18, United States Code, gives each offender the right to advice of counsel and to the appointment of counsel in proceedings to verify consent pursuant to section 4108 of title 18, United States Code, if he or she is financially unable to obtain an attorney. Counsel shall advise and assist offenders prior to and at the proceedings. Section 4109(b) of title 18, United States Code, provides for the appointment of guardians ad litem to act on behalf of financially eligible minor or incompetent offenders in proceedings to verify their consent for transfer to the United States from a foreign country. Appointment of guardians ad litem shall be independent of appointment of counsel under section 4109 of title 18, United States Code.
3. Factfinding. The determination of whether an offender is eligible for appointment of counsel or a guardian ad litem is a function to be performed by the verifying officer in accordance with these regulations. Offenders will normally provide information regarding their financial status on AO Form 273, shown at Appendix B. Completed forms should be provided to the designated verifying officer. Although the verifying officer may obtain additional information, factfinding should be done prior to the offender's appearance at the verification proceeding whenever practicable.
4. Standards for Eligibility. An offender is "financially eligible" for appointment of counsel or a guardian ad litem within the meaning of section 4109 if his or her net financial resources and income are insufficient to enable the offender to obtain qualified counsel or to provide for the compensation and travel expenses of a guardian ad litem. In determining whether such insufficiency exists, consideration should be given to the cost of providing the offender and his or her dependents with the necessities of life. The determination of eligibility should be made without regard to the financial ability of the offender's family unless the family indicates willingness and financial ability to retain counsel or provide a guardian ad litem promptly. Any doubts as to an offender's eligibility should be resolved in his or her favor.

5. Procedures for Appointment of Counsel and Guardians ad litem. Unless the offender waives representation by counsel, the verifying officer should determine if an offender is financially unable to obtain counsel. If consent for a transfer is to be given by a guardian ad litem in accordance with section 4100(b) of title 18, United States Code, the verifying officer should appoint a guardian ad litem for each financially eligible offender who is under 18 years of age or is mentally incompetent or otherwise incapable of knowingly and voluntarily consenting to the transfer. Upon determining that an appointment should be made, the verifying officer should contact the Defender Services Division, Administrative Office of the United States Courts (area code 202-502-3030) to determine if a federal public or community defender, counsel from some other government agency, or a CJA private panel attorney is available for appointment as counsel or guardian ad litem. The verifying officer shall appoint the counsel or guardian ad litem designated by the Administrative Office.

Suggested forms for ordering the appointment of counsel and guardians ad litem pursuant to section 4109(a)(2) and (b) are shown at Appendices C and D, respectively.

Compensation and Reimbursement of Expenses

1. Federal Public and Community Defenders. Federal Public and Community Defenders appointed pursuant to section 4109(a)(2) and (b) of title 18, United States Code, will obtain travel authorization and advances from the Defender Services Division of the Administrative Office of the U.S. Courts (area code 202-502-3030), and submit travel vouchers, with supporting documentation, to their local clerk of court for reimbursement of expenses. A copy of the travel voucher should be forwarded to the Defender Services Division. The Administrative Office of the U.S. Courts will initiate action to obtain reimbursement of expenses from the Department of State pursuant to section 4109(a)(2) of title 18, United States Code.
2. Other Government Attorneys. Should an attorney from another government agency be appointed, the attorney's travel voucher shall be submitted to his or her own agency for payment in the usual manner. The attorney may obtain travel advances from his or her agency in accordance with standard practices. The agency concerned will thereafter initiate action to obtain reimbursement from the Department of State pursuant to section 4109(a)(2) of title 18, United States Code.

3. Private Panel Attorneys and Guardians ad Litem.

- a. Claim Forms. Private attorneys appointed pursuant to section 4109(a)(2) of title 18, United States Code, and guardians ad litem appointed pursuant to section 4109(b) of title 18, United States Code, will complete a claim for compensation and reimbursement of travel expenses, and obtain the signature of the verifying officer showing approval of the compensation and expenses. The form located at Appendix E may be used for this purpose.
- b. Hourly Rates. Private counsel and guardians ad litem may be compensated at rates not exceeding the hourly rates prescribed by subsection (d) of the CJA for time expended during the proceeding to verify consent and in advising or consulting with the offender, preparing to render advice, and in necessary travel, unless an alternative rate is applicable.
- c. Maximum Compensation. Maximum compensation for counsel or guardians ad litem appointed pursuant to section 4109(a)(2) or (b) of title 18, United States Code, respectively, is the CJA maximum for a misdemeanor.
- d. Claim for Excess Compensation. Payment in excess of the limitation set forth at subparagraph c above may be made to provide fair compensation in those cases requiring extended or complex representation when so certified by the verifying officer and approved by the Chief Judge of the United States Court of Appeals for the Circuit in the district which designated the verifying officer. Counsel and guardians ad litem claiming in excess of the statutory maximum shall submit with the voucher a detailed memorandum supporting and justifying the claim that the representation given was in an extended or complex case and that the excess payment is necessary to provide fair compensation.
- e. Expenses. Reasonably incurred out-of-pocket expenses, such as for travel, meals, and lodging, may be claimed and must be itemized and reasonably documented. Receipts for airline tickets or for other methods of transportation, lodging (regardless of the amount) and other items of subsistence in excess of \$25, except for meals, must be submitted to obtain reimbursement. Expenses attributable to general office overhead and the cost of items of a personal nature purchased for or on behalf of the person represented are not reimbursable.
- f. Submission for Payment. Upon approval by the verifying officer and, if required, by the Chief Judge of a United States Court of Appeals, the verifying officer will forward the claim to the Bureau of Consular Affairs, Department of State, Washington, D. C. 20520, for payment.

- g. Travel Advances. Travel advances for private panel attorneys serving as counsel or guardian ad litem are available from the Department of State pursuant to section 4109(a)(2) of title 18, United States Code. In order to obtain an advance, the verifying officer must send a letter detailing the point of departure, the destination and the duration of the stay, along with a copy of the appointment order, to the Bureau of Consular Affairs, Department of State, Washington, D.C. 20520. The advance will be sent directly to the attorney or guardian ad litem by the Department of State.

APPENDIX A

CHAPTER 306—TRANSFER TO OR FROM FOREIGN COUNTRIES

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HISTORICAL AND STATUTORY NOTES

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See section 235 of Pub.L. 98-473, Title II, c. II, Oct. 12, 1984, 98 Stat. 2031, as amended, set out as a note under section 3551 of this title.

§ 4100. Scope and limitation of chapter

(a) The provisions of this chapter relating to the transfer of offenders shall be applicable only when a treaty providing for such a transfer is in force, and shall only be applicable to transfers of offenders to and from a foreign country pursuant to such a treaty. A sentence imposed by a foreign country upon an offender who is subsequently transferred to the United States pursuant to a treaty shall be subject to being fully executed in the United States even though the treaty under which the offender was transferred is no longer in force.

(b) An offender may be transferred from the United States pursuant to this chapter only to a country of which the offender is a citizen or national. Only an offender who is a citizen or national of the United States may be transferred to the United States. An offender may be transferred to or from the United States only with the offender's consent, and only if the offense for which the offender was sentenced satisfies the requirement of double criminality as defined in this chapter. Once an offender's consent to transfer has been verified by a verifying officer, that consent shall be irrevocable. If at the time of transfer the offender is under eighteen years of age, or is deemed by the verifying officer to be mentally incompetent or otherwise incapable of knowingly and voluntarily consenting to the transfer, the transfer shall not be accomplished unless consent to the transfer be given by a parent or guardian, guardian ad litem, or by an appropriate court of the sentencing country. The appointment of a guardian ad litem shall be independent of the appointment of counsel under section 4109 of this title.

(c) An offender shall not be transferred to or from the United States if a proceeding by way of appeal or of collateral attack upon the conviction or sentence be pending.

(d) The United States upon receiving notice from the country which imposed the sentence that the offender has been granted a pardon, commutation, or amnesty, or that there has been an ameliorating modification or a revocation of the sentence shall give the offender the benefit of the action taken by the sentencing country.

(Added Pub.L. 95-144, § 1, Oct. 28, 1977, 91 Stat. 1212, and amended Pub.L. 100-690, Title VII, § 7101(e), Nov. 18, 1988, 102 Stat. 4416.)

HISTORICAL AND STATUTORY NOTES

Prisoner Transfer Treaties

Pub.L. 104-208, Div. C, Title III, § 330, Sept. 30, 1996, 110 Stat. 3009-631, provided that:

Complete Annotation Materials, see Title 18, U.S.C.A.

“(a) Negotiations with other countries.—(1) Congress advises the President to begin to negotiate and renegotiate, not later than 90 days after the date of enactment of this Act [Sept. 30, 1996], bilateral prisoner transfer treaties, providing for the incarceration, in the country of the alien's nationality, of any alien who—

“(A) is a national of a country that is party to such a treaty; and

“(B) has been convicted of a criminal offense under Federal or State law and who—

“(i) is not in lawful immigration status in the United States, or

“(ii) on the basis of conviction for a criminal offense under Federal or State law, or on any other basis, is subject to deportation or removal under the Immigration and Nationality Act [8 U.S.C.A. § 1101 et seq.],

for the duration of the prison term to which the alien was sentenced for the offense referred to in subparagraph (B). Any such agreement may provide for the release of such alien pursuant to parole procedures of that country.

“(2) In entering into negotiations under paragraph (1), the President may consider providing for appropriate compensation, subject to the availability of appropriations, in cases where the United States is able to independently verify the adequacy of the sites where aliens will be imprisoned and the length of time the alien is actually incarcerated in the foreign country under such a treaty.

“(b) Sense of Congress.—It is the sense of the Congress that—

“(1) the focus of negotiations for such agreements should be—

“(A) to expedite the transfer of aliens unlawfully in the United States who are (or are about to be) incarcerated in United States prisons,

“(B) to ensure that a transferred prisoner serves the balance of the sentence imposed by the United States courts,

“(C) to eliminate any requirement of prisoner consent to such a transfer, and

“(D) to allow the Federal Government or the States to keep their original prison sentences in force so that transferred prisoners who return to the United States prior to the completion of their original United States sentences can be returned to custody for the balance of their prison sentences;

“(2) the Secretary of State should give priority to concluding an agreement with any country for which the President determines that the number of aliens described in subsection (a) who are nationals of that country in the United States represents a significant percentage of all such aliens in the United States; and

“(3) no new treaty providing for the transfer of aliens from Federal, State, or local incarceration facilities to a foreign incarceration facility should permit the alien to refuse the transfer.

“(c) Prisoner consent.—Notwithstanding any other provision of law, except as required by treaty, the transfer of an alien from a Federal, State, or local incarceration facility under an agreement of the type referred to in subsection (a) shall not require consent of the alien.

“(d) Annual report.—Not later than 90 days after the date of the enactment of this Act [Sept. 30, 1996], and annually thereafter, the Attorney General shall submit a report to the Committees on the Judiciary of the House of Representatives and of the Senate stating whether each prisoner transfer treaty to which the United States is a party has been effective in the preceding 12 months in bringing about the return of deportable incarcerated aliens to the country of which they are nationals and in ensuring that they serve the balance of their sentences.

“(e) Training foreign law enforcement personnel.—(1) Subject to paragraph (2), the President shall direct the Border Patrol Academy and the Customs Service Academy to enroll for training an appropriate number of foreign law enforcement personnel, and shall make appointments of foreign law enforcement personnel to such academies, as necessary to further the following United States law enforcement goals:

“(A) Preventing of drug smuggling and other cross-border criminal activity.

“(B) Preventing illegal immigration.

“(C) Preventing the illegal entry of goods into the United States (including goods the sale of which is illegal in the United States, the entry of which would cause a quota to be exceeded, or the appropriate duty or tariff for which has not been paid).

“(2) The appointments described in paragraph (1) shall be made only to the extent there is capacity in such academies beyond what is required to train United States citizens needed in the Border Patrol and Customs Service, and only of personnel from a country with which the prisoner transfer treaty has been stated to be effective in the most recent report referred to in subsection (d).

“(f) Authorization of appropriations.—There are authorized to be appropriated such sums as may be necessary to carry out this section.”

Authorization of Appropriations

Section 5(a) of Pub.L. 95-144 provided that: “There is authorized to be appropriated such funds as may be required to carry out the purposes of this Act [which enacted this chapter, section 955 of Title 10, Armed Forces, and section 2256 of Title 28, Judiciary and Judicial Procedure, amended section 636 of Title 28, and enacted provisions set out as notes under sections 3006A, 4100, and 4102 of this title].”

§ 4101. Definitions

As used in this chapter the term—

(a) “double criminality” means that at the time of transfer of an offender the offense for which he has been sentenced is still an offense in the transferring country and is also an offense in the receiving country. With regard to a country which has a federal form of government, an act shall be deemed to be an offense in that country if it is an offense under the federal laws or the laws of any state or province thereof;

(b) “imprisonment” means a penalty imposed by a court under which the individual is confined to an institution;

(c) "juvenile" means—

(1) a person who is under eighteen years of age; or

(2) for the purpose of proceedings and disposition under chapter 403 of this title because of an act of juvenile delinquency, a person who is under twenty-one years of age;

(d) "juvenile delinquency" means—

(1) a violation of the laws of the United States or a State thereof or of a foreign country committed by a juvenile which would have been a crime if committed by an adult; or

(2) noncriminal acts committed by a juvenile for which supervision or treatment by juvenile authorities of the United States, a State thereof, or of the foreign country concerned is authorized;

(e) "offender" means a person who has been convicted of an offense or who has been adjudged to have committed an act of juvenile delinquency;

(f) "parole" means any form of release of an offender from imprisonment to the community by a releasing authority prior to the expiration of his sentence, subject to conditions imposed by the releasing authority and to its supervision, including a term of supervised release pursuant to section 3583;

(g) "probation" means any form of a sentence under which the offender is permitted to remain at liberty under supervision and subject to conditions for the breach of which a penalty of imprisonment may be ordered executed;

(h) "sentence" means not only the penalty imposed but also the judgment of conviction in a criminal case or a judgment of acquittal in the same proceeding, or the adjudication of delinquency in a juvenile delinquency proceeding or dismissal of allegations of delinquency in the same proceedings;

(i) "State" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States;

(j) "transfer" means a transfer of an individual for the purpose of the execution in one country of a sentence imposed by the courts of another country; and

(k) "treaty" means a treaty under which an offender sentenced in the courts of one country may be transferred to the country of which he is a citizen or national for the purpose of serving the sentence.
(Added Pub.L. 95-144, § 1, Oct. 28, 1977, 91 Stat. 1213, and amended Pub.L. 98-473, Title II, § 223(m)(1), Oct. 12, 1984, 98 Stat. 2029.)

HISTORICAL AND STATUTORY NOTES

Effective and Applicability Provisions

1984 Acts. Amendment by Pub.L. 98-473 effective on the first day of first calendar month beginning thirty six months

after Oct. 12, 1984, applicable only to offenses committed after taking effect of sections 211 to 239 of Pub.L. 98-473, and except as otherwise provided for therein, see section 235 of Pub.L. 98-473, as amended, set out as a note under section 3551 of this title.

§ 4102. Authority of the Attorney General

The Attorney General is authorized—

(1) to act on behalf of the United States as the authority referred to in a treaty;

(2) to receive custody of offenders under a sentence of imprisonment, on parole, or on probation who are citizens or nationals of the United States transferred from foreign countries and as appropriate confine them in penal or correctional institutions, or assign them to the parole or probation authorities for supervision;

(3) to transfer offenders under a sentence of imprisonment, on parole, or on probation to the foreign countries of which they are citizens or nationals;

(4) to make regulations for the proper implementation of such treaties in accordance with this chapter and to make regulations to implement this chapter;

(5) to render to foreign countries and to receive from them the certifications and reports required to be made under such treaties;

(6) to make arrangements by agreement with the States for the transfer of offenders in their custody who are citizens or nationals of foreign countries to the foreign countries of which they are citizens or nationals and for the confinement, where appropriate, in State institutions of offenders transferred to the United States;

(7) to make agreements and establish regulations for the transportation through the territory of the United States of offenders convicted in a foreign country who are being transported to a third country for the execution of their sentences, the expenses of which shall be paid by the country requesting the transportation;

(8) to make agreements with the appropriate authorities of a foreign country and to issue regulations for the transfer and treatment of juveniles who are transferred pursuant to treaty, the expenses of which shall be paid by the country of which the juvenile is a citizen or national;

(9) in concert with the Secretary of Health, Education, and Welfare, to make arrangements with the appropriate authorities of a foreign country and to issue regulations for the transfer and treatment of individuals who are accused of an offense but who have been determined to be mentally ill; the ex-

penses of which shall be paid by the country of which such person is a citizen or national;

(10) to designate agents to receive, on behalf of the United States, the delivery by a foreign government of any citizen or national of the United States being transferred to the United States for the purpose of serving a sentence imposed by the courts of the foreign country, and to convey him to the place designated by the Attorney General. Such agent shall have all the powers of a marshal of the United States in the several districts through which it may be necessary for him to pass with the offender, so far as such power is requisite for the offender's transfer and safekeeping; within the territory of a foreign country such agent shall have such powers as the authorities of the foreign country may accord him;

(11) to delegate the authority conferred by this chapter to officers of the Department of Justice.
(Added Pub.L. 95-144, § 1, Oct. 28, 1977, 91 Stat. 1214.)

HISTORICAL AND STATUTORY NOTES

Change of Name

The Secretary and Department of Health, Education, and Welfare was redesignated the Secretary and Department of Health and Human Services by Pub.L. 96-88, Title V, § 509(b), Oct. 17, 1979, 93 Stat. 635, which is classified to section 3508(b) of Title 20, Education.

Certification by Attorney General to Secretary of State for Reimbursement of Expenses Incurred Under Transfer Treaty

Section 5(b) of Pub.L. 95-144 provided that: "The Attorney General shall certify to the Secretary of State the expenses of the United States related to the return of an offender to the foreign country of which the offender is a citizen or national for which the United States is entitled to seek reimbursement from that country under a treaty providing for transfer and reimbursement."

§ 4103. Applicability of United States laws

All laws of the United States, as appropriate, pertaining to prisoners, probationers, parolees, and juvenile offenders shall be applicable to offenders transferred to the United States, unless a treaty or this chapter provides otherwise.

(Added Pub.L. 95-144, § 1, Oct. 28, 1977, 91 Stat. 1215.)

§ 4104. Transfer of offenders on probation

(a) Prior to consenting to the transfer to the United States of an offender who is on probation, the Attorney General shall determine that the appropriate United States district court is willing to undertake the supervision of the offender.

(b) Upon the receipt of an offender on probation from the authorities of a foreign country, the Attorney General shall cause the offender to be brought before

the United States district court which is to exercise supervision over the offender.

(c) The court shall place the offender under supervision of the probation officer of the court. The offender shall be supervised by a probation officer, under such conditions as are deemed appropriate by the court as though probation had been imposed by the United States district court.

(d) The probation may be revoked in accordance with section 3653 of this title and rule 32(f) of the Federal Rules of Criminal Procedure. A violation of the conditions of probation shall constitute grounds for revocation. If probation is revoked the suspended sentence imposed by the sentencing court shall be executed.

(e) The provisions of sections 4105 and 4106 of this title shall be applicable following a revocation of probation.

(f) Prior to consenting to the transfer from the United States of an offender who is on probation, the Attorney General shall obtain the assent of the court exercising jurisdiction over the probationer.
(Added Pub.L. 95-144, § 1, Oct. 28, 1977, 91 Stat. 1215.)

§ 4105. Transfer of offenders serving sentence of imprisonment

(a) Except as provided elsewhere in this section, an offender serving a sentence of imprisonment in a foreign country transferred to the custody of the Attorney General shall remain in the custody of the Attorney General under the same conditions and for the same period of time as an offender who had been committed to the custody of the Attorney General by a court of the United States for the period of time imposed by the sentencing court.

(b) The transferred offender shall be given credit toward service of the sentence for any days, prior to the date of commencement of the sentence, spent in custody in connection with the offense or acts for which the sentence was imposed.

(c)(1) The transferred offender shall be entitled to all credits for good time, for labor, or any other credit toward the service of the sentence which had been given by the transferring country for time served as of the time of the transfer. Subsequent to the transfer, the offender shall in addition be entitled to credits toward service of sentence for satisfactory behavior, computed on the basis of the time remaining to be served at the time of the transfer and at the rate provided in section 3624(b) of this title for a sentence of the length of the total sentence imposed and certified by the foreign authorities. These credits shall be combined to provide a release date for the offender pursuant to section 3624(a) of this title.

(2) If the country from which the offender is transferred does not give credit for good time, the basis of

computing the deduction from the sentence shall be the sentence imposed by the sentencing court and certified to be served upon transfer, at the rate provided in section 3624(b) of this title.

(3) Credit toward service of sentence may be withheld as provided in section 3624(b) of this title.

(4) Any sentence for an offense against the United States, imposed while the transferred offender is serving the sentence of imprisonment imposed in a foreign country, shall be aggregated with the foreign sentence, in the same manner as if the foreign sentence was one imposed by a United States district court for an offense against the United States.

(Added Pub.L. 95-144, § 1, Oct. 28, 1977, 91 Stat. 1215, and amended Pub.L. 98-473, Title II, § 223(m)(2), Oct. 12, 1984, 98 Stat. 2029.)

HISTORICAL AND STATUTORY NOTES

Effective and Applicability Provisions

1984 Acts. Amendment by Pub.L. 98-473 effective on the first day of first calendar month beginning thirty six months after Oct. 12, 1984, applicable only to offenses committed after taking effect of sections 211 to 239 of Pub.L. 98-473, and except as otherwise provided for therein, see section 235 of Pub.L. 98-473, as amended, set out as a note under section 3551 of this title.

§ 4106. Transfer of offenders on parole; parole of offenders transferred

(a) Upon the receipt of an offender who is on parole from the authorities of a foreign country, the Attorney General shall assign the offender to the United States Parole Commission for supervision.

(b) The United States Parole Commission and the Chairman of the Commission shall have the same powers and duties with reference to an offender transferred to the United States to serve a sentence of imprisonment or who at the time of transfer is on parole as they have with reference to an offender convicted in a court of the United States except as otherwise provided in this chapter or in the pertinent treaty. Sections 4201 through 4204; 4205(d), (e), and (h); 4206 through 4215; and 4218 of this title shall be applicable.

(c) An offender transferred to the United States to serve a sentence of imprisonment may be released on parole at such time as the Parole Commission may determine.

(d) This section shall apply only to offenses committed before November 1, 1987, and the Parole Commission's performance of its responsibilities under this section shall be subject to section 235 of the Comprehensive Crime Control Act of 1984.

(Added Pub.L. 95-144, § 1, Oct. 28, 1977, 91 Stat. 1216, and amended Pub.L. 98-473, Title II, § 223(m)(3), Oct. 12, 1984, 98 Stat. 2029; Pub.L. 100-182, § 14, Dec. 7, 1987, 101 Stat. 1268; Pub.L. 100-690, Title VII, § 7072(c), Nov. 18, 1988, 102 Stat. 4405.)

HISTORICAL AND STATUTORY NOTES

Effective and Applicability Provisions

1984 Acts. Amendment by Pub.L. 98-473 effective on the first day of first calendar month beginning thirty six months after Oct. 12, 1984, applicable only to offenses committed after taking effect of sections 211 to 239 of Pub.L. 98-473, and except as otherwise provided for therein, see section 235 of Pub.L. 98-473, as amended, set out as a note under section 3551 of this title.

§ 4106A. Transfer of offenders on parole; parole of offenders transferred

(a) Upon the receipt of an offender who is on parole from the authorities of a foreign country, the Attorney General shall assign the offender to the United States Parole Commission for supervision.

(b)(1)(A) The United States Parole Commission shall, without unnecessary delay, determine a release date and a period and conditions of supervised release for an offender transferred to the United States to serve a sentence of imprisonment, as though the offender were convicted in a United States district court of a similar offense.

(B) In making such determination, the United States Parole Commission shall consider—

(i) any recommendation of the United States Probation Service, including any recommendation as to the applicable guideline range; and

(ii) any documents provided by the transferring country; relating to that offender.

(C) The combined periods of imprisonment and supervised release that result from such determination shall not exceed the term of imprisonment imposed by the foreign court on that offender.

(D) The duties conferred on a United States probation officer with respect to a defendant by section 3552 of this title shall, with respect to an offender so transferred, be carried out by the United States Probation Service.

(2)(A) A determination by the United States Parole Commission under this subsection may be appealed to the United States court of appeals for the circuit in which the offender is imprisoned at the time of the determination of such Commission. Notice of appeal must be filed not later than 45 days after receipt of notice of such determination.

(B) The court of appeals shall decide and dispose of the appeal in accordance with section 3742 of this title as though the determination appealed had been a sentence imposed by a United States district court.

(3) During the supervised release of an offender under this subsection, the United States district court for the district in which the offender resides shall supervise the offender.

(c) This section shall apply only to offenses committed on or after November 1, 1987.

(Added Pub.L. 100-690, Title VII, § 7101(a), Nov. 18, 1988, 102 Stat. 4416, and amended Pub.L. 101-647, Title XXXV, §§ 3599B, 3599C, Nov. 29, 1990, 104 Stat. 4931, 4932.)

HISTORICAL AND STATUTORY NOTES

Codification

Amendment by section 3599C of Pub.L. 101-647 directed the insertion of a period at the end of subsec. (b)(1)(C). Such period had already been editorially supplied, therefore, no further change was required.

§ 4107. Verification of consent of offender to transfer from the United States

(a) Prior to the transfer of an offender from the United States, the fact that the offender consents to such transfer and that such consent is voluntary and with full knowledge of the consequences thereof shall be verified by a United States magistrate or a judge as defined in section 451 of title 28, United States Code.

(b) The verifying officer shall inquire of the offender whether he understands and agrees that the transfer will be subject to the following conditions:

(1) only the appropriate courts in the United States may modify or set aside the conviction or sentence, and any proceedings seeking such action may only be brought in such courts;

(2) the sentence shall be carried out according to the laws of the country to which he is to be transferred and that those laws are subject to change;

(3) if a court in the country to which he is transferred should determine upon a proceeding initiated by him or on his behalf that his transfer was not accomplished in accordance with the treaty or laws of that country, he may be returned to the United States for the purpose of completing the sentence if the United States requests his return; and

(4) his consent to transfer, once verified by the verifying officer, is irrevocable.

(c) The verifying officer, before determining that an offender's consent is voluntary and given with full knowledge of the consequences, shall advise the offender of his right to consult with counsel as provided by this chapter. If the offender wishes to consult with counsel before giving his consent, he shall be advised that the proceedings will be continued until he has had an opportunity to consult with counsel.

(d) The verifying officer shall make the necessary inquiries to determine that the offender's consent is voluntary and not the result of any promises, threats, or other improper inducements, and that the offender accepts the transfer subject to the conditions set forth in subsection (b). The consent and acceptance shall

be on an appropriate form prescribed by the Attorney General.

(e) The proceedings shall be taken down by a reporter or recorded by suitable sound recording equipment. The Attorney General shall maintain custody of the records.

(Added Pub.L. 95-144, § 1, Oct. 28, 1977, 91 Stat. 1216.)

HISTORICAL AND STATUTORY NOTES

Change of Name

United States magistrate appointed under section 631 of Title 28, Judiciary and Judicial Procedure, to be known as United States magistrate judge after Dec. 1, 1990, with any reference to United States magistrate or magistrate in Title 28, in any other Federal statute, etc., deemed a reference to United States magistrate judge appointed under section 631 of Title 28, see section 321 of Pub.L. 101-650, set out as a note under section 631 of Title 28.

§ 4108. Verification of consent of offender to transfer to the United States

(a) Prior to the transfer of an offender to the United States, the fact that the offender consents to such transfer and that such consent is voluntary and with full knowledge of the consequences thereof, shall be verified in the country in which the sentence was imposed by a United States magistrate, or by a citizen specifically designated by a judge of the United States as defined in section 451 of title 28, United States Code. The designation of a citizen who is an employee or officer of a department or agency of the United States shall be with the approval of the head of that department or agency.

(b) The verifying officer shall inquire of the offender whether he understands and agrees that the transfer will be subject to the following conditions:

(1) only the country in which he was convicted and sentenced can modify or set aside the conviction or sentence, and any proceedings seeking such action may only be brought in that country;

(2) the sentence shall be carried out according to the laws of the United States and that those laws are subject to change;

(3) if a United States court should determine upon a proceeding initiated by him or on his behalf that his transfer was not accomplished in accordance with the treaty or laws of the United States, he may be returned to the country which imposed the sentence for the purpose of completing the sentence if that country requests his return; and

(4) his consent to transfer, once verified by the verifying officer, is irrevocable.

(c) The verifying officer, before determining that an offender's consent is voluntary and given with full knowledge of the consequences, shall advise the offender of his right to consult with counsel as provided

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by this chapter. If the offender wishes to consult with counsel before giving his consent, he shall be advised that the proceedings will be continued until he has had an opportunity to consult with counsel.

(d) The verifying officer shall make the necessary inquiries to determine that the offender's consent is voluntary and not the result of any promises, threats, or other improper inducements, and that the offender accepts the transfer subject to the conditions set forth in subsection (b). The consent and acceptance shall be on an appropriate form prescribed by the Attorney General.

(e) The proceedings shall be taken down by a reporter or recorded by suitable sound recording equipment. The Attorney General shall maintain custody of the records.

(Added Pub.L. 95-144, § 1, Oct. 28, 1977, 91 Stat. 1217, and amended Pub.L. 98-473, Title II, § 223(m)(4), Oct. 12, 1984, 98 Stat. 2030; Pub.L. 100-690, Title VII, § 7101(b), Nov. 18, 1988, 102 Stat. 4415.)

HISTORICAL AND STATUTORY NOTES

Effective and Applicability Provisions

1984 Act. Amendment by Pub.L. 98-473 effective on the first day of first calendar month beginning thirty six months after Oct. 12, 1984, applicable only to offenses committed after taking effect of sections 211 to 239 of Pub.L. 98-473, and except as otherwise provided for therein, see section 235 of Pub.L. 98-473, as amended, set out as a note under section 3551 of this title.

Change of Name

United States magistrate appointed under section 631 of Title 28, Judiciary and Judicial Procedure, to be known as United States magistrate judge after Dec. 1, 1990, with any reference to United States magistrate or magistrate in Title 28, in any other Federal statute, etc., deemed a reference to United States magistrate judge appointed under section 631 of Title 28, see section 321 of Pub.L. 101-650, set out as a note under section 631 of Title 28.

§ 4109. Right to counsel, appointment of counsel

(a) In proceedings to verify consent of an offender for transfer, the offender shall have the right to advice of counsel. If the offender is financially unable to obtain counsel—

(1) counsel for proceedings conducted under section 4107 shall be appointed in accordance with section 3006A of this title. Such appointment shall be considered an appointment in a misdemeanor case for purposes of compensation under the Act;

(2) counsel for proceedings conducted under section 4108 shall be appointed by the verifying officer pursuant to such regulations as may be prescribed by the Director of the Administrative Office of the United States Courts. The Secretary of State shall make payments of fees and expenses of the appoint-

ed counsel, in amounts approved by the verifying officer, which shall not exceed the amounts authorized under section 3006A of this title for representation in a misdemeanor case. Payment in excess of the maximum amount authorized may be made for extended or complex representation whenever the verifying officer certifies that the amount of the excess payment is necessary to provide fair compensation, and the payment is approved by the chief judge of the United States court of appeals for the appropriate circuit. Counsel from other agencies in any branch of the Government may be appointed: *Provided*, That in such cases the Secretary of State shall pay counsel directly, or reimburse the employing agency for travel and transportation expenses. Notwithstanding section 3324(a) and (b) of title 31, the Secretary may make advance payments of travel and transportation expenses to counsel appointed under this subsection.

(b) Guardians ad litem appointed by the verifying officer under section 4100 of this title to represent offenders who are financially unable to provide for compensation and travel expenses of the guardian ad litem shall be compensated and reimbursed under subsection (a)(1) of this section.

(c) The offender shall have the right to advice of counsel in proceedings before the United States Parole Commission under section 4106A of this title and in an appeal from a determination of such Commission under such section. If the offender is financially unable to obtain counsel, counsel for such proceedings and appeal shall be appointed under section 3006A of this title.

(Added Pub.L. 95-144, § 1, Oct. 28, 1977, 91 Stat. 1218, and amended Pub.L. 97-258, § 3(e)(2), Sept. 13, 1982, 96 Stat. 1064; Pub.L. 100-690, Title VII, § 7101(d), Nov. 18, 1988, 102 Stat. 4416; Pub.L. 101-647, Title XXXV, § 3598, Nov. 29, 1990, 104 Stat. 4931.)

§ 4110. Transfer of juveniles

An offender transferred to the United States because of an act which would have been an act of juvenile delinquency had it been committed in the United States or any State thereof shall be subject to the provisions of chapter 403 of this title except as otherwise provided in the relevant treaty or in an agreement pursuant to such treaty between the Attorney General and the authority of the foreign country. (Added Pub.L. 95-144, § 1, Oct. 28, 1977, 91 Stat. 1218.)

§ 4111. Prosecution barred by foreign conviction

An offender transferred to the United States shall not be detained, prosecuted, tried, or sentenced by the United States, or any State thereof for any offense the prosecution of which would have been barred if the sentence upon which the transfer was based had been

by a court of the jurisdiction seeking to prosecute the transferred offender, or if prosecution would have been barred by the laws of the jurisdiction seeking to prosecute the transferred offender if the sentence on which the transfer was based had been issued by a court of the United States or by a court of another State.

(Added Pub.L. 95-144, § 1, Oct. 28, 1977, 91 Stat. 1218.)

§ 4112. Loss of rights, disqualification

An offender transferred to the United States to serve a sentence imposed by a foreign court shall not incur any loss of civil, political, or civic rights nor incur any disqualification other than those which under the laws of the United States or of the State in which the issue arises would result from the fact of the conviction in the foreign country.

(Added Pub.L. 95-144, § 1, Oct. 28, 1977, 91 Stat. 1218.)

§ 4113. Status of alien offender transferred to a foreign country

(a) An alien who is deportable from the United States but who has been granted voluntary departure pursuant to section 240B of the Immigration and Nationality Act and who is transferred to a foreign country pursuant to this chapter shall be deemed for all purposes to have voluntarily departed from this country.

(b) An alien who is the subject of an order of removal from the United States pursuant to section 240 of the Immigration and Nationality Act who is transferred to a foreign country pursuant to this chapter shall be deemed for all purposes to have been removed from this country.

(c) An alien who is the subject of an order of removal from the United States pursuant to section 240 of the Immigration and Nationality Act, who is transferred to a foreign country pursuant to this chapter shall be deemed for all purposes to have been excluded from admission and removed from the United States.

(Added Pub.L. 95-144, § 1, Oct. 28, 1977, 91 Stat. 1219, and amended Pub.L. 104-208, Div. C, Title III, § 308(d)(4)(U), (e)(1)(Q), (2)(I), (g)(3)(B), (5)(A)(iv), Sept. 30, 1996, 110 Stat. 3009-619, 3009-620, 3009-622, 3009-623.)

HISTORICAL AND STATUTORY NOTES

References in Text

The Immigration and Nationality Act, referred to in text, is Act June 27, 1952, c. 477, 66 Stat. 163, as amended, which is classified principally to chapter 12 (section 1101 et seq.) of Title 8, Aliens and Nationality. Sections 240 and 240B of such Act are classified to sections 1229a and 1229c, respectively, of Title 8. For complete classification of this Act to the Code, see Short Title note set out under section 1101 of Title 8 and Tables.

Effective and Applicability Provisions

1996 Acts. Amendment by section 308(d)(4)(U), (e)(1)(Q), (2)(I), and (g)(3)(B) of Div. C. of Pub.L. 104-208, effective, with certain exceptions and subject to certain transitional rules, on the first day of the first month beginning more than 180 days after Sept. 30, 1996, see section 309 of Pub.L. 104-208, set out as a note under section 1101 of Title 8, Aliens and Nationality.

Severability of Provisions

If any provision of Division C of Pub.L. 104-208 or the application of such provision to any person or circumstances is held to be unconstitutional, the remainder of Division C of Pub.L. 104-208 and the application of the provisions of Division C of Pub.L. 104-208 to any person or circumstance not to be affected thereby, see section 1(e) of Pub.L. 104-208, set out as a note under section 1101 of Title 8, Aliens and Nationality.

§ 4114. Return of transferred offenders

(a) Upon a final decision by the courts of the United States that the transfer of the offender to the United States was not in accordance with the treaty or the laws of the United States and ordering the offender released from serving the sentence in the United States the offender may be returned to the country from which he was transferred to complete the sentence if the country in which the sentence was imposed requests his return. The Attorney General shall notify the appropriate authority of the country which imposed the sentence, within ten days, of a final decision of a court of the United States ordering the offender released. The notification shall specify the time within which the sentencing country must request the return of the offender which shall be no longer than thirty days.

(b) Upon receiving a request from the sentencing country that the offender ordered released be returned for the completion of his sentence, the Attorney General may file a complaint for the return of the offender with any justice or judge of the United States or any authorized magistrate within whose jurisdiction the offender is found. The complaint shall be upon oath and supported by affidavits establishing that the offender was convicted and sentenced by the courts of the country to which his return is requested; the offender was transferred to the United States for the execution of his sentence; the offender was ordered released by a court of the United States before he had completed his sentence because the transfer of the offender was not in accordance with the treaty or the laws of the United States; and that the sentencing country has requested that he be returned for the completion of the sentence. There shall be attached to the complaint a copy of the sentence of the sentencing court and of the decision of the court which ordered the offender released.

A summons or a warrant shall be issued by the justice, judge or magistrate ordering the offender to

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appear or to be brought before the issuing authority. If the justice, judge, or magistrate finds that the person before him is the offender described in the complaint and that the facts alleged in the complaint are true, he shall issue a warrant for commitment of the offender to the custody of the Attorney General until surrender shall be made. The findings and a copy of all the testimony taken before him and of all documents introduced before him shall be transmitted to the Secretary of State, that a Return Warrant may issue upon the requisition of the proper authorities of the sentencing country, for the surrender of offender.

(c) A complaint referred to in subsection (b) must be filed within sixty days from the date on which the decision ordering the release of the offender becomes final.

(d) An offender returned under this section shall be subject to the jurisdiction of the country to which he is returned for all purposes.

(e) The return of an offender shall be conditioned upon the offender being given credit toward service of the sentence for the time spent in the custody of or under the supervision of the United States.

(f) Sections 3186, 3188 through 3191, and 3195 of this title shall be applicable to the return of an

offender under this section. However, an offender returned under this section shall not be deemed to have been extradited for any purpose.

(g) An offender whose return is sought pursuant to this section may be admitted to bail or be released on his own recognizance at any stage of the proceedings. (Added Pub.L. 95-144, § 1, Oct. 28, 1977, 91 Stat. 1219.)

§ 4115. Execution of sentences imposing an obligation to make restitution or reparations

If in a sentence issued in a penal proceeding of a transferring country an offender transferred to the United States has been ordered to pay a sum of money to the victim of the offense for damage caused by the offense, that penalty or award of damages may be enforced as though it were a civil judgment rendered by a United States district court. Proceedings to collect the moneys ordered to be paid may be instituted by the Attorney General in any United States district court. Moneys recovered pursuant to such proceedings shall be transmitted through diplomatic channels to the treaty authority of the transferring country for distribution to the victim.

(Added Pub.L. 95-144, § 1, Oct. 28, 1977, 91 Stat. 1220.)